

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MIDDLETON,

Defendant,

and

AMERICAN FUNDS SERVICE CO.,

Garnishee.

Case No. 14-50339

Honorable John Corbett O'Meara

ORDER DENYING DEFENDANT'S REQUEST FOR HEARING

This matter came before the court on defendant John Middleton's April 16, 2014 Request Concerning the Government's Order of Garnishment and Defendant's Claim for Exemptions. The government filed a response April 28, 2014; and Defendant filed an answer to the response May 12, 2014.

Defendant Middleton seeks a hearing "for the purpose of submitting objections to the government's order of garnishment, and for submitting his claims for exemptions." Specifically, Middleton objects to the government's garnishment of his 401(k) account with American Funds Service Company.

Under the Mandatory Victims Restitution Act, the United States is responsible for collecting unpaid restitution for the purpose of making the victim whole. 18 U.S.C. §§ 3612 and 3613. A defendant may request a hearing regarding garnishment; however, Section 3202(d) limits the issues

at such a hearing to the probable validity of any claim of exemption and the government's compliance with statutory requirements. A defendant who contests a writ of garnishment bears the burden of showing he is entitled to an exemption. United States v. Sawaf, 74 F.3d 119, 122 (6th Cir. 1996).

While there is an exemption for "certain annuity and pension payments," this exemption is limited to pensions arising under the Railroad Retirement Act and retirement payments from certain military accounts. I.R.C. § 6334(a)(6). In this case, defendant Middleton's pension account is a privately-funded savings account; and there is no exemption available to protect this asset from garnishment for the unpaid restitution debt.

ORDER

It is hereby **ORDERED** that defendant Middleton's April 16, 2014 request for a hearing is **DENIED**.

It is further **ORDERED** that the garnishee American Funds Service Company is **DIRECTED TO PAY** 100% of defendant Middleton's interest in his 401(k) account to the Clerk of the Court until such time as the debt in Case No. 03-80103 is paid in full or the garnishee no longer has custody or control of assets belonging to John Middleton.

s/John Corbett O'Meara
United States District Judge

Date: May 20, 2014

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, May 20, 2014, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager